

REMARKS

Claims 1-16 are pending and rejected in this application. No claims are added; claim 11 is deleted and claims 1,8,12,14,15 and 16 are amended. Thus, with the entry of this amendment, claims 1-10 and 12-16 will be pending and active in this case.

The Examiner has withdrawn the finality of the previous rejection and raised a new grounds of rejection based upon Applicant's own disclosure. Specifically, the Examiner argues that Applicant's disclosure at page 22, lines 12-22 renders the claimed compositions obvious under 35 USC § 103. The Examiner states: "Clearly, the statement concludes that the instant compounds or ingredients are old and well-known in the art, thus the formulation of the compounds or ingredients into composition is routinely known in the art." Office Action at page 2. Applicant respectfully traverses this rejection.

The language in question is as follows:

However, in terms of practical utility, the levels of these agents generally only reach useful values, that is to say levels in excess of 0.1% of dry mass, in certain species of Rutaceae. Furthermore, these useful levels are only achieved during the phases of growth where the plant would not normally be used for food, or in parts of the plant which are not considered part of the edible portion such as the leaves. In particular relatively high levels of synephrine and related substances (such as octopamine, hordenine, tyramine and N- methyltyramine) can be found in various Citrus species, including in particular, but not restricted to, strains of Citrus reticulata (also known as tangerine or mandarin orange), Citrus aurantium (also known as C. florida, C. Vulgaris, C. Bigaradia, Sour orange, Bitter orange, Seville orange, Neroli orange), Citrus medica, Citrus maxima, Citrus limon, Citrus aurantiifolia, citrus paradisi, Citrus sinensis and Poncirus trifoliata (trifoliata orange).

Applicant responds that it is only upon hindsight of knowing Applicant's invention that one could arrive at a composition comprising a weight loss effective or weight controlling effective amount of one of synephrine, hordenine, octopamine, tyramine or

N-methyltyramine. Prior to applicant's discovery, no one knew that such compounds could be used for weight loss. Thus, the Examiner's assertion that it would have been routine to determine the effective amounts recited in claims 2-6 is misplaced because it was the Applicant who discovered the new use for these compounds. Nothing in the art, including the fact that the compounds were known to exist in certain plants, suggests compositions comprising weight loss effective amounts of the listed compounds. Accordingly, nothing suggests the precise amounts recited in claims 2-6.

In order to further clarify the invention, Applicant amends claims 1 and 12 to recite an amount effective for reducing or controlling weight. The other amendments are to correct formal matters. All amendments are fully supported by the specification.

CONCLUSION

In view of the above comments and amendment, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 USC § 103.

Respectfully submitted,

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Date

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